

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional total reimbursement of \$3,776.23 for dates of service, 05/01/01, 05/29/01 and 08/24/01.
- b. The request was received on, 04/09/02.

II. EXHIBITS

1. Requestor, Exhibit I:
 - a. Initial TWCC 60 and Letter Requesting Dispute Resolution
 1. UB-92s
 2. Medical Audit summary/EOB/TWCC 62 form
 - b. Subsequent Submission of Information received 06/03/02
 1. Position Statement
 2. UB-92
 3. Medical Audit summary/EOB/TWCC 62 form
 4. Medical Records
 5. Example EOBs from other Carriers
 - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
 - a. Response to a Request for Dispute Resolution
 - b. Reimbursement data
 - c. Medical Audit summary/EOB/TWCC 62 form
 - d. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 06/04/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 06/04/02. The response from the insurance carrier was received in the Division on 06/13/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor: Letter dated 05/29/02

“We are appealing the amount disallowed on the above mention [sic] claim. These charges are for **FACILITY FEES**, not professional fees. We feel that 38% & 35% paid on a two lumbar epidural steroid injections and 14% paid on a lumbar Discogram is not fair or reasonable. We feel that (Carrier) should reimburse us more appropriately as the amounts reimbursed do not cover our cost to perform these procedures....”

2. Respondent Letter dated 06/13/02

“The requester provides no rational why billing its usual and customary fee for this procedure is fair and reasonable and appears to be implying that usual and customary is the same as fair and reasonable. If that were the case then the legislature would have used that as the basis for determining an appropriate amount in the absence of a MAR and used that wording instead in Section 413.011(b). To be sure, billing usual and customary without any discussion of how this may be fair and reasonable is, itself, neither fair nor reasonable.”

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only dates of service eligible for review are 05/01/01, 05/29/01 and 08/24/01.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor’s Table of Disputed Services, the Requestor billed the Carrier a total of \$4,957.83 for services rendered on the above dates in dispute.
4. Per the Requestor’s Table of Disputed Services, the Carrier paid the Requestor a total of \$1,118.60 for services rendered on the above dates in dispute and continues to deny additional reimbursement as reduced to fair and reasonable.
5. Per the Requestor’s Table of Disputed Services, the amount in dispute is \$3,776.23 for services rendered on the above dates in dispute.

V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011 (b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees

charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (I) (1-4) places certain requirements on the Carrier when reducing the billed amount to fair and reasonable. Regardless of the Carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement. Even though the provider has submitted EOBs from other carriers to document what it considers fair and reasonable reimbursement, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 29th day of August 2002.

Denise Terry, R.N.
Medical Dispute Resolution Officer
Medical Review Division

DT/dt